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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/510,509

10/07/2004

Barry Hague

C7664 US

8895

7590

04/27/2006

JohnsonDiversey Inc  
Patent Section-M S 509  
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EXAMINER

PRICE, CRAIG JAMES

ART UNIT

PAPER NUMBER

3753

DATE MAILED: 04/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/510,509             | HAGUE ET AL.        |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Craig Price            | 3753                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 9-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/7/04, 2/16/05</u> .                                                    | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
It does not identify the city and either state or foreign country of residence of each inventor. The residence information may be provided on either an application data sheet or supplemental oath or declaration.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 depends on claim 5 as amended, in which claim 5 is a canceled claim. Please clarify.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, and 9-13 are rejected under 35 U.S.C. 102(e) as being unpatentable by Smeller et al. (6,363,977).

Smeller et al. disclose an eductor comprising a venturi structure, an air gap across which in air gap operational mode a liquid jet is passed to the venturi structure (54) and a removable non-return valve (52a) located in the air gap, whereby the eductor is convertible between air gap operational mode and non-return valve operational mode, as seen in Figures 17 and 18 (Col. 6, Lns. 32 – Col. 7, Lns. 2).

Regarding claim 2, Smeller et al. disclose an eductor, wherein in air gap operational mode the eductor has a nozzle to provide the liquid jet, the nozzle being removable and replaced by the non-return valve (52 a shown in Figure 17) on conversion as shown in Figure 18.

Regarding claim 3, Smeller et al. disclose an eductor, wherein the non-return valve has an outlet providing in use a fluid jet directed into the venturi structure, as shown in Figure 17 (and Col. 2, Lns. 35-36 in US 6,240,983, incorporated by reference into '977, which describes the operation of the valve contained in Smeller et al.).

Regarding claim 4, Smeller et al. disclose an eductor, wherein the non-return valve provides a sealed first flow path across the air gap when open for liquid flow to the venturi structure (disclosed in US 6,240,983, Col. 2, Lns. 26-33) and provides a second

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flow path for back flow from the venturi structure into the air gap out of the non-return valve when the first flow path is closed (disclosed in US 6,240,983 and Col. 2, Lns. 36-41 and the second path is shown in figure 3b).

Regarding claims 9 and 10, the device shown by Smeller et al. will perform the methods as recited in claims 9 and 10, during normal operational use of the device.

Regarding claim 11, Smeller et al. disclose an eductor, wherein the non-return valve has an outlet providing in use a fluid jet directed into the venturi structure, as shown in Figure 17 (and Col. 2, Lns. 35-36 in US 6,240,983, incorporated by reference into '977, which describes the operation of the valve contained in Smeller et al.).

Regarding claim 12, Smeller et al. disclose an eductor, wherein the non-return valve provides a sealed first flow path across the air gap when open for liquid flow to the venturi structure (disclosed in US 6,240,983, Col. 2, Lns. 26-33) and provides a second flow path for back flow from the venturi structure into the air gap out of the non-return valve when the first flow path is closed (disclosed in US 6,240,983 and Col. 2, Lns. 36-41 and the second path is shown in figure 3b).

Regarding claim 13, Smeller et al. disclose an eductor, wherein the non-return valve provides a sealed first flow path across the air gap when open for liquid flow to the venturi structure (disclosed in US 6,240,983, Col. 2, Lns. 26-33) and provides a second flow path for back flow from the venturi structure into the air gap out of the non-return valve when the first flow path is closed (disclosed in US 6,240,983 and Col. 2, Lns. 36-41 and the second path is shown in figure 3b).

**Conclusion**

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Beldham et al. (6,240,983), Haas (6,634,376), Haas (2004/0050438), Russell et al. (5,673,725), Beldham et al. (6,532,998), Oliver (6,766,831), and Boticki et al. (5,678,592) all disclose similar devices. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Craig Price whose telephone number is (571) 272-2712. The examiner can normally be reached on 7AM - 5:30PM M-R.

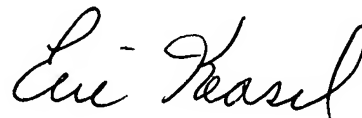
5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Keasel can be reached on (571) 272-4929. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CP



18 April 2006



ERIC KEASEL  
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